

ABA Model Procurement Code-2000 VERSION
A summary

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Please comment

The American Bar Association Model Procurement Code is a detailed procurement code for both state and local governments; its' provisions are set out in 12 articles. The code is a re-draft of an earlier version, drafted by the American Bar Association in consultation with eight professional interests groups and an institution of higher learning. The topics include:

GENERAL PROVISIONS-Article 1, providing a general overview of the Code, including rules of construction, definitions and public access to procurement information.

PROCUREMENT ORGANIZATION-Article 2, creating a procurement policy office and a centralized procurement authority. The model suggests a policy-making board separate from day-to-day operations. Operations would be headed by a chief procurement officer.

SOURCE SELECTION AND CONTRACT FORMATION-Article 3, setting out the alternatives in source selections and the details of the bidding process and the qualifications of bidders. This provision details seven procurement procedures:

- competitive sealed bidding: This is the standard process of invitation to bid, public notice, bid opening, evaluation and award
- competitive sealed proposals: The request for proposals process is used when competitive sealed bidding is either not practicable or not advantageous. An example would be a contract for design. This process should include the factors used to evaluate the proposals, such as the relative importance of price and other factors.
- small purchases: Purchases under a designated amount do not need to follow any specific process.
- sole source procurement: Purchases under a designated amount do not need to follow any specific process if the purchasing authority determines in writing that there is only one source for the required supply, service, or construction item.
- emergency procurements: The purchasing authority may make or authorize others to make emergency procurements when there exists a threat to public health, welfare, or safety under emergency conditions.
- special procurements: With prior public notice the purchasing authority may authorize special procurements where an unusual or unique situation exists that makes the application of all other bidding requirements contrary to the public interest.
- architectural and engineering services. [see below]

SPECIFICATIONS-Article 4, detailing the process for setting specifications, including, any description of the physical or functional characteristics, or of the nature of a supply, service, or construction item. This provision sets a general standard that specifications shall seek to promote economy, encourage competition and not be unduly restrictive.

PROCUREMENT OF INFRASTRUCTURE FACILITIES AND SERVICES-Article 5, setting out standards for building, design and service procurement. Specific provisions deal with design requirements, architectural and engineering services, bonds and insurance and fiscal responsibility. Design services are acquired through requests for proposals; pure construction contracts use competitive sealed bidding. These provisions offer a series of criteria for requests dealing with design services; they include: (1)

demonstrated compliance with the design requirements, (2) qualifications, (3) financial capacity, (4) project schedule, (5) price and (6) other factors. In some cases an independent peer reviewer may be used to evaluate the competence and qualifications of the offeror.

MODIFICATION AND TERMINATION OF CONTRACTS FOR SUPPLIES AND SERVICES-Article 6, setting out provisions for contract modifications and price adjustments. These provisions set out standards for such things as change orders or price variations.

COST PRINCIPLES-Article 7, requiring policies to be developed relating to the determination of reimbursable costs under a contract. This provision require rulemaking which would establish guidelines when the absence of open market competition precludes the use of competitive sealed bidding; when negotiating adjustments for directed changes or modifications in contract performance; when negotiating settlements of contracts which have been terminated; or as appropriate in other situations where the determination of estimated or incurred costs is involved.

SUPPLY MANAGEMENT-Article 8, relating generally to supply issues and the disposal of surplus property.

LEGAL AND CONTRACTUAL REMEDIES-Article 9, establishing a process for the litigation of resolution of disputes, and establishing remedies for breach of the contract. This provision includes for the (optional) establishment of an administrative appeal board and sets out a process for excluding a person from consideration for award of contracts if there is probable cause for debarment.

INTERGOVERNMENTAL RELATIONS-Article 10, relating to cooperation between state and local governments. This provision allows for a "cooperative purchasing agreement" for the procurement of any supplies, services, or construction with one or more government units in accordance with an agreement entered into between the participants. Cooperative purchasing may include, but is not limited to, joint or multi-party contracts and open-ended contracts that are made available to other government units.

ASSISTANCE TO SMALL AND DISADVANTAGED BUSINESSES-Article 11, establishing special provisions relating to small and disadvantaged businesses. This provision sets out a very general policy proving assistance to small and disadvantaged businesses. The assistance includes such things as staff assistance with the procurement process, special publicity concerning procurement procedures special publications designed to assist small and disadvantaged businesses, source lists of small and disadvantaged businesses, training programs and actual solicitation of bids from small and disadvantaged businesses.

ETHICS IN PUBLIC CONTRACTING-Article 12, establishing standards for ethical conduct and a framework for handling of violations by the Ethics and Campaign Finance disclosure commission. This provision sets out very detailed standards relating to conflict-of-interest and prohibited activities. The provision also establishes specific legal remedies for violation of the standards.